

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM**

CFDA # 97.039

City of Newport

City of Newport NE 70th Drive Landslide Acquisition Project

Not to Exceed \$1,020,807.00

Grant No: DR-4258-OR-3-R

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM", and **City of Newport**, hereinafter referred to as "Subrecipient", and collectively referred to as the "Parties".

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs (described in Section 6.a) incurred beginning on **February 17, 2016**, and shall terminate upon completion and approval of the Project by federal and state officials, including the completion of close-out and audit. This period shall be known as the (Grant Award Period). The Project shall be completed no later than **February 17, 2020** (Expiration Date), unless otherwise extended as provided in this Agreement. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **FEMA Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C; Exhibit D.

3. **Project Cost, Grant Funds.** The total estimated cost of the Project for the purpose of this Grant Agreement is \$1,361,076.00. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed 75 percent of the Project Costs or **\$1,020,807.00**, whichever is less, in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program are provided by the Federal Emergency Management Agency (FEMA) and are administered by OEM. Subrecipient will commit at least twenty-five percent (25%) non-Federal match to the Project. The non-Federal match can be cash, in-kind or a combination of both. For this sub-grant, the non-Federal share contribution shall be 25 percent of the Project Costs, up to **\$340,269.00**. Subrecipient shall apply any savings, rebates and reductions in cost to reduce the overall cost of the Project. Subrecipient is responsible for any costs in excess of the total Project Cost.

- 4. Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
- 5. Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.
 - a. Performance and Close-Out Reports.**
 - i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
 - ii. Reports are due to OEM on or before 15 days following the end of each calendar quarter (March 31, June 30, September 30, and December 31).
 - iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.
 - iv. Subrecipient shall submit final close-out report to OEM for review which must include a financial performance report, construction reports (if applicable), invention disclosure (if applicable), Federally-owned property report (if applicable), and final request for reimbursement (if applicable).
 - b. Financial Reimbursement Requests.**
 - i. To receive reimbursement, Subrecipient must submit a Hazard Mitigation Grant Program Request for Reimbursement of Funds form (RfR) to OEM which references the appropriate Hazard Mitigation Program Grant Project Number, FEMA Project Number, FEMA FIPS Number and DUNS Number, and appropriate documentation as required. Partial payments of funds for costs already incurred may be requested at any time during the Project. Each request must include appropriate supporting documentation of the incurred costs. A final Request must be submitted no later than 30 days following completion of the Project or the Expiration Date, whichever occurs first.
 - ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
 - iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
 - iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.
- 6. Disbursement and Recovery of Grant Funds.**
 - a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of the RfR. Eligible Project Costs are the reasonable and necessary costs incurred by Subrecipient for the Project that are not excluded from reimbursement by OEM or FEMA either by this Agreement or by exclusion as a result of financial review or audit.

- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subrecipient has provided to OEM a RfR in accordance with Section 5.b of this Agreement.
- c. Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subrecipient shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

The Subrecipient shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subrecipient shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subrecipient obtains recovery from a responsible party, the Subrecipient shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subrecipient shall pay to the state the proportionate Federal share of all project funds recovered in excess of costs of litigation.

- 7. Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:
- a. Organization and Authority.** Subrecipient is a city and local government of the State of Oregon duly organized under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, subrecipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

Subrecipient must prepare a Schedule of Expenditures of Federal Awards (SEFA) that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number, identifying number assigned by the pass-through entity and current year expenditures.

- b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200 and to apprise itself of all rules and regulations set forth.
- c. Audits.**
 - i.** If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

- ii. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. **Subagreements.** Subrecipient may enter into agreements (hereafter “subagreements”) for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).
 - i. Subrecipient shall provide to OEM copies of all Requests for Proposals (RFPs) or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RfR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
 - v. In the event that Subrecipient subcontracts for engineering services, Subrecipient shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm’s contract. If the firm is unable to obtain errors and omissions

insurance, the firm shall post a bond with Subrecipient for the benefit of Subrecipient of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that the subcontract shall terminate immediately upon cancellation or lapse of the bond or insurance and shall require the subcontractor to notify Subrecipient immediately upon any change in insurance coverage or cancellation or lapse of the bond.

b. Purchases and Management of Property and Equipment; Records. Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

- i. All property and equipment purchased under this Agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
- ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.

For acquisition projects, Subrecipient shall retain real estate transaction and property tracking records indefinitely to enable FEMA to track the use of real property acquired with grant funds and ensure that the property is maintained for open space in perpetuity (see 44 CFR Part 80).

- iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
- iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
- vii. Subrecipient agrees to comply with 2 CFR 200.313 when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- ix. Subrecipient shall, and shall require its contractors to, retain the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds

shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with this Agreement.

- c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.

- b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
 - i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least thirty days' notice to the other Party.
- d. **Effect of Termination.** In the event of termination of this Agreement, each party shall be liable only for project costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subrecipient will return all Federal funds paid to Subrecipient for the Project which have not been expended or irrevocably committed to eligible activities.

11. General Provisions

- a. **Indemnity.** Subrecipient shall, as required by ORS 401.178(2), indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the activities of Subrecipient, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement. If legal limitations apply to the indemnification ability of Subrecipient, this indemnification shall be for the maximum amount of funds available for expenditure, including any available contingency funds, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds. If requested by OEM, Subrecipient shall purchase commercial insurance covering this indemnification.
- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. **Responsibility for Grant Funds.** Subrecipient shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Subrecipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any

agency of the State of Oregon or the United States of America or any other party, organization or individual.

- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to the persons identified in the signature blocks or to such other persons, addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

The Subrecipient will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

- k. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. **Headings.** The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.
- m. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- n. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- o. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

City of Newport

By

Dr. R. M. L.

Name
(printed)

Spencer R. Nebel

Date

08-18-16

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By Steve Rich, City Attorney SR
Subrecipient's Legal Counsel

Date 8-18-16

Subrecipient Program Contact:

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-0626
d.tokos@newportoregon.gov

Subrecipient Fiscal Contact:

Mike Murzynsky
Finance Director
169 SW Coast Highway
Newport, OR 97365
541-574-0610
m.murzynsky@newportoregon.gov

OEM

By

Clint Fella

Clint Fella

Mitigation and Recovery Services Section Manager, OEM

Date

8/23/16

APPROVED AS TO FORM

By Cynthia C. Byrnes via email
Assistant Attorney General

Date September 3, 2015

OEM Program Contact:

Angela Lane
State Hazard Mitigation Officer
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-2911 extension 22247
Angela.Lane@state.or.us

OEM Fiscal Contact:

Nicole Hanson
Grants Program Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3849
Nicole.l.hanson@state.or.us

EXHIBIT A

Please refer to FEMA obligation documents

EXHIBIT B

Federal Requirements and Certifications

I. General. Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. Compliance with Applicable Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
 - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
 - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or sub-awards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
 2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
 3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
 4. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
 5. 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
 6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to

demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

- 1. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
 - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
 - g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.
- 2. Equal Employment Opportunity Program.** Subrecipient, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subrecipient must maintain a current copy on file.
- 3. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. Subrecipient shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
 - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
 - b. National Historic Preservation Act, 16 USC § 470 et seq.
 - c. Endangered Species Act, 16 USC § 1531 et seq.
 - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subrecipient to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subrecipient shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
 3. For any of Subrecipient's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subrecipient, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.
- F. Procurement of recovered materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this

office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject to the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

Q. Federal Debt Status. Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

R. Construction Contracts.

1. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 2. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).
 3. Contracts awarded by Subrecipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
 4. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).
- S. Funding Agreements.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate

limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

“TAIL” COVERAGE. If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor’s completion and Subrecipient’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days’ written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.

EXHIBIT D

Information required by 2 CFR 200.331(a)


1. Federal Award Identification: - DR-4258-OR-3-R
 - (i) Sub-recipient name (which must match registered name in DUNS): City of Newport
 - (ii) Sub-recipient's DUNS number: 030794671
 - (iii) Federal Award Identification Number (FAIN): DR-4258-OR-3-R
 - (iv) Federal Award Date: 7/12/16
 - (v) Sub-award Period of Performance 2/17/2016, through 2/17/2020
 - (vi) Total Amount of Federal Funds Obligated by this Agreement: \$1,020,807.00
 - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$1,020,807.00
 - (viii) Total Amount of Federal Award committed to the subrecipient by the pass-through entity: \$1,020,807.00
 - (ix) Federal award project description: City of Newport NE 70th Drive Landslide Acquisition Project
 - (x) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
 - (a) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
 - (b) Contact information for awarding official of the pass-through entity: Andrew Phelps, Director, P O Box 14370, Salem, OR 97309-5062
 - (xi) CFDA Number and Name: 97.039 Hazard Mitigation Grant Program
Amount: \$1,020,807.00
 - (xii) Is Award R&D? No
 - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 0%



U.S. Department of Homeland Security
FEMA Region 10
130 – 228th Street, SW
Bothell, Washington 98021-8627

FEMA

July 28, 2016

Andrew Phelps 
Director, Office of Emergency Management
Oregon Military Department
P.O. Box 14370
Salem, Oregon 97309-5062

RE: Hazard Mitigation Grant Program (HMGP) for DR-4258-OR
Corrected Approval of Project 4258-3-R – City of Newport
City of Newport NE 70th Drive Landslide Acquisition Project

Dear Mr. Phelps:

The U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA), Region 10 has approved and obligated funding for this seven home landslide acquisition project submitted on May 31, 2016 under the HMGP for Disaster DR-4258-OR. Our original award letter dated July 14, 2016 transposed the City of Newport and Homeowner cost match amounts. This letter serves to correct the discrepancy in the cost match portion of the original award letter and verify that the National Emergency Management Information System entries are correct. All original conditions, Federal obligation amounts, and approval dates remain in effect.

Early Friday morning December 18, 2015, a rapidly developing landslide along NE 70th Drive in Newport, OR gave-way directly impacting seven private residences. The rain-induced landslide immediately destroyed one home, while two others so severely damaged were red-tagged by the City. An engineering geologist determined the remaining four homes were in imminent threat of failure due to developing landslide activity and these homes were yellow-tagged by the City. The purpose of this project is to acquire the seven impacted homes and restore the properties to open space, which will isolate the active landslide area from the larger subdivision development.

380 NE 70th Drive - Newport, OR 97365
384 NE 70th Drive – Newport, OR 97365
392 NE 70th Drive – Newport, OR 97365
394 NE 70th Drive – Newport, OR 97365
396 NE 70th Drive – Newport, OR 97365
398 NE 70th Drive – Newport, OR 97365
410 NE 70th Drive – Newport, OR 97365

Mr. Phelps
July 28, 2016
Page 2

Total Project Cost:	\$1,361,076
Federal share (75%):	\$1,020,807
Local match – Homeowner (20.75%):	\$282,500
Local match – City of Newport (4.25%):	\$57,769

FEMA approved this project on June 22, 2016, and the Large Project Notification to Congress cleared on July 6, 2016 and obligated funds on July 12, 2016; the paperwork is enclosed. The Period of Performance for DR-4258 currently ends on February 17, 2020. Please note that FEMA does not specify a sub-award Period of Performance. Once the state receives notification that a project is complete and the final site inspection performed, submit closeout documentation to Region 10 within 90 days, except when given approval for an extension by Hazard Mitigation Assistance (HMA) staff.

FEMA reviewed the project per the National Environmental Policy Act (NEPA) and related laws and Executive Orders on June 13, 2016. A copy of the CATEX Record of Environmental Consideration (REC) is enclosed.

Additionally the following are enclosed:

- Environmental conditions pertinent to this project
- Standard HMGP administrative provisions

For further assistance, please contact Brandon Sweezee, HMA Specialist, at (425) 487-2022.

Sincerely,



Mark Carey, Director
Mitigation Division

Enclosures

cc: Dennis Sigrist, State Hazard Mitigation Officer

BTS: vl

Environmental Conditions of Approval: June 13, 2016

Project DR4258-3-R– City of Newport NE 70th Drive Landslide Acquisition Project

- The sub-recipient shall dispose of all demolition debris at an appropriately approved, licensed, or permitted facility.
- Sub-recipient is responsible for determining the presence of hazardous materials. This may include, but is not limited to, asbestos, lead paint, propane cylinders, discarded paints and solvents, cleaning chemicals, containers of pesticides, and items containing chlorofluorocarbons (CFCs). Sub-recipient shall identify, handle, transport, and dispose of hazardous materials and/or toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies, including completing required noticing.
- This review does not address all Federal, State, and local requirements. Acceptance of Federal funding requires recipient to comply with all Federal, State, and local laws. Failure to obtain all appropriate Federal, State, and local environmental permits and clearances may jeopardize Federal funding.
- Any change to the approved Scope of Work will require re-evaluation for compliance with the National Environmental Policy Act (NEPA) and other laws and EOs (Executive Orders).
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and Federal Emergency Management Agency (FEMA).

07/13/2016

FEDERAL EMERGENCY MANAGEMENT AGENCY

HMGP-OB-01

9:28 AM

HAZARD MITIGATION GRANT PROGRAM

Obligation

Disaster No	FEMA Project No	Amendment No	State Application ID	Action No	Supplemental No	State	Recipient
4258	3-R	0	3	1	2	OR	Statewide

Sub-Recipient: Newport

Project Title : City of Newport - NE 70th Drive Landslide Acquisition Project

Sub-Recipient FIPS Code: 041-52450

Total Amount Previously Allocated	Total Amount Previously Obligated	Total Amount Pending Obligation	Total Amount Available for New Obligation
\$1,020,807	\$1,020,807	\$0	\$0

Project Amount	Recipient Admin Est	Sub-Recipient Admin Est	Total Obligation	IFMIS Date	IFMIS Status	FY
\$1,020,807	\$0	\$0	\$1,020,807	07/12/2016	Accept	2016

Comments

Date: 07/11/2016 User Id: BSWEZEZEA

Comment: On Thursday evening December 17, 2015, and into early Friday morning December 18, (incident period for DR-4258) a rapidly developing landslide along NE 70th Drive in Newport gave way directly impacting seven private residences. One home was immediately destroyed by the rain-induced landslide while two others were so severely damaged as to be red-tagged by the City. Four other homes were determined to be in imminent threat of failure (yellow-tagged) of the developing and/or future landslide activity as determined by an engineering geologist. The purpose of this project is to acquire the seven impacted homes and restore the properties to open space with the idea active landslide area will be isolated from the larger subdivision development.

Consideration was made for strategic funds mgmt phasing but full award determined as best option as the City is expediting acquisition and demo to complete all work prior to fall rainy season in order to prevent additional erosion.

Date: 07/12/2016 User Id: KMEYERS

Comment: On Thursday evening December 17, 2015, and into early Friday morning December 18, (incident period for DR-4258) a rapidly developing landslide along NE 70th Drive in Newport gave way directly impacting seven private residences. One home was immediately destroyed by the rain-induced landslide while two others were so severely damaged as to be red-tagged by the City. Four other homes were determined to be in imminent threat of failure (yellow-tagged) of the developing and/or future landslide activity as determined by an engineering geologist. The purpose of this project is to acquire the seven impacted homes and restore the properties to open space with the idea active landslide area will be isolated from the larger subdivision development.

Consideration was made for strategic funds mgmt phasing but full award determined as best option as the City is expediting acquisition and demo to complete all work prior to fall rainy season in order to prevent additional erosion.

HMO Approval - 7/12/2016

Authorization

Preparer Name: BRANDON SWEEZEZEA

Preparation Date: 07/11/2016

HMO Authorization Name: KRISTEN MEYERS

HMO Authorization Date: 07/12/2016

06/20/2016

**FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANT PROGRAM**

HMGP-EV-01

1:12 PM

Environmental Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Recipient
4258	3 - R	0	3	OR	Statewide

Sub-Recipient: Newport

FIPS Code: 041-52450

Project Title : City of Newport - NE 70th Drive Landslide Acquisition Project

FEMA Laws/EOs

Laws/EOs	Status
Coastal Barriers Resources Act (CBRA)	Not Applicable

Clean Water Act (CWA)

Completed

Comment: The project, as described, will not affect waters of the US.-JSTEWA27-06/13/2016 20:39 GMT

Coastal Zone Management Act (CZMA)

Completed

Comment: As per Oregon Department of Land Conservation and Development (DLCD), if the federal nexus is limited to providing project funding DLCD does not object to the federal funding under our CZMA authority, provided the applicant receives and complies with the conditions of all necessary local, state, and federal permits.-JSTEWA27-06/13/2016 20:42 GMT

Endangered Species Act (ESA)

Completed

Comment: Listed species are present in Lincoln County, however given urbanized location(s), short duration, and nature of work, the potential for T&E presence and effects is negligible.-JSTEWA27-06/13/2016 20:43 GMT

Fish and Wildlife Coordination Act (FWCA)

Not Applicable

National Historic Preservation Act (NHPA)

Completed

Comment: Project scope of work meets the criteria outlined in Appendix D, Programmatic Allowances, Section I.A. and II.A., of the NHPA Section 106 Programmatic Agreement V.3/1/11-Oregon. Allowance determination was based on written detailed undertaking damage and repair descriptions, and site map and made by a SOI qualified FEMA archaeologist and/or historic preservation specialist.-JSTEWA27-06/13/2016 20:44 GMT
None of the buildings are over 50 years old.-SKILNER-06/15/2016 20:02 GMT

Clean Air Act (CAA)

Completed

Comment: Grantee states no asbestos or lead paint is present.-JSTEWA27-06/13/2016 20:55 GMT

Migratory Birds Treaty Act (MBTA)

Completed

Comment: Although the project area may be in a flyway zone, the scope of work does not have the potential to take migratory birds.-JSTEWA27-06/13/2016 21:17 GMT

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

Completed

Comment: The project, as described, will not adversely affect critical habitat.-JSTEWA27-06/13/2016 21:16 GMT

Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RC)

Completed

Comment: The grantee states that debris not recycled will be disposed of at Coffin Butte Landfill (29175 Coffin Butte Rd, Corvallis OR 97330).-JSTEWA27-06/13/2016 21:15 GMT

E.O. 11988: Floodplains

Completed

Comment: Based on the effective FIRM panels 41041C0366D, FM41041C0504D and FM41041C0508D, all dated 12/18/2009, the project is outside the floodplain and has no effect on the floodplain or flood levels.-JSTEWA27-06/13/2016 21:08 GMT

06/20/2016

**FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANT PROGRAM**

HMGP-EV-01

1:12 PM

Environmental Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Recipient
4258	3-R	0	3	OR	Statewide

Sub-Recipient: Newport

FIPS Code: 041-52450

Project Title : City of Newport - NE 70th Drive Landslide Acquisition Project

FEMA Laws/EOs

Laws/EOs	Status
E.O. 11990: Wetlands	Completed
Comment: Per review of the USFWS National Wetlands Inventory (NWI) mapper, accessed 6/13/2016, the project is not located in a wetland.-JSTEW27-06/13/2016 21:09 GMT	
E.O. 12898: Environmental Justice for Low Income and Minority Populations	Completed
Comment: There are low income or minority populations in this community, but this project will not adversely impact these populations.-JSTEW27-06/13/2016 21:12 GMT	

Required Conditions Resulting from Environmental Review

Law	Entered By	Monitoring Required	Monitoring Completed Date	Monitoring Completed By
RCRA	Science A. Kilner	<input type="checkbox"/>	00/00/0000	
Conditions Required (4000)	The sub-recipient shall dispose of all demolition debris at an appropriately approved, licensed, or permitted facility.			
RCRA	Science A. Kilner	<input type="checkbox"/>	00/00/0000	
Conditions Required (4000)	Sub-recipient is responsible for determining the presence of hazardous materials. This may include, but is not limited to, asbestos, lead paint, propane cylinders, discarded paints and solvents, cleaning chemicals, containers of pesticides, and items containing chlorofluorocarbons (CFCs). Sub-recipient shall identify, handle, transport, and dispose of hazardous materials and/or toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies, including completing required noticing.			

FEMA NEPA Process**FEMA Status**

Catex - Completed

3 CATEX Type Code

If an extraordinary circumstance exists and leads to a significant environmental impact (see 44CFR 10.8 (d) (3)), an Environ.Assessment shall be prepared.

7. Acquisition, demolition and removal of properties (vii)

☒ No Extraordinary Circumstances Requiring an EA.
Documentation Complete:06/13/2016

12. Demolition and disposal of uncontaminated structures (xii)

13. Physical relocation of individual structures where FEMA does not select site (xiii)

Standard Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

06/20/2016

1:12 PM

**FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANT PROGRAM**

HMGP-EV-01

Environmental Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Recipient
4258	3 - R	0	3	OR	Statewide

Sub-Recipient: Newport

FIPS Code: 041-52450

Project Title : City of Newport - NE 70th Drive Landslide Acquisition Project

Comment:

Newport, City of. Lincoln County. The grantee will purchase 7 properties. Lots at east end of NE 70th Drive, Newport Oregon (Tax Lots 102, 4700, 6000, 6100, 6200, 6300, 6400 and 6500, Assessor's Map 10-11-20-CA.) All dwellings are manufactured homes that were placed on site between 1995 and 1999. Dwellings to be removed; ancillary structures, foundations, and concrete slabs to be demolished and hauled to Coffin Butte Landfill (29175 Coffin Butte Rd, Corvallis OR 97330); utilities to be capped; over-steepened slopes to be regraded; and site to be re-seeded after City takes possession of the properties. Rebar will be recycled, and concrete will be crushed and either disposed of at the above referenced facility, or used as fill by the City. All work to be finished by 9/30/16 before wet weather sets in. City will maintain the open space in perpetuity. Debris disposal from property destroyed during the slide event involved no federal funding. Six remaining manufactured homes will be moved to a temp staging area at the Newport Municipal Airport (135 SE 84th St, Newport, OR 97366). They will be stored until local non-profits can re-purpose the units for affordable/workforce housing.-JSTEW27-06/13/2016 21:23 GMT

Standard Administrative Provisions for Hazard Mitigation Grant Program (HMGP)
FEMA Region 10 – updated July 27, 2016

- The recipient agrees that all use of funds under this sub-award will be in accordance with the *Hazard Mitigation Assistance Unified Guidance* in effect at the time of the Disaster Declaration, relevant HMGP guidance and policy memos and directives, as well as the HMGP regulations in 44 CFR 206.
- The recipient may receive payment in advance using the HHS Payment Management System (PMS) formerly known as SmartLink. The recipient may advance portions of the approved Federal share to the sub-recipient provided the recipient maintains procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement to the sub-recipient. Sub-recipients must comply with the same payment requirement as the recipient and must comply with the requirements specified in the recipient's sub-award agreement.
- The recipient shall follow regulations found in Title 2 Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the FEMA/State/Tribe Agreement in effect for the subject Disaster Declaration.
- The Federal Funding Accountability and Transparency Act (FFATA) of 2006 (2 CFR Part 170) requires recipients to report certain information about themselves and their first-tier sub-recipients for each Federal award of \$25,000 or more awarded on or after October 1, 2010.
- The recipient must obtain prior approval from Region 10 before implementing changes to the approved project Scope of Work (SOW). FEMA must approve, in advance, a change in the SOW regardless of the budget implications. Transfer of funds between total direct cost categories in the approved budget shall receive the prior approval of FEMA when such cumulative transfers among those direct cost categories exceed ten percent of the total budget. The recipient must fully document cost overrun requests; the project must remain cost-effective, and funds must be available within the HMGP ceiling for said disaster.
- The recipient must notify their assigned Regional Hazard Mitigation Assistance Specialist as soon as significant developments become known, such as delays or adverse conditions, that might raise costs or delay completion, or favorable conditions allowing earlier completion or substantially lower cost (for reallocation of funding).
- The recipient shall submit the Federal Financial Report (FFR, SF-425) to Region 10 Grant Programs Division within 30 days of the end of the first Federal quarter following the Award Letter. The recipient shall submit quarterly FFRs thereafter until the grant ends. Reports are due on January 30, April 30, July 30, and October 30. The recipient must submit a report for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. Future awards and fund drawdown withholdings may occur if these reports are delinquent.
- The recipient shall submit Quarterly Performance Reports (QPR) in Excel format to the Regional HMA Specialist within 30 days of the end of each quarter. The Recipient shall submit quarterly PPRs thereafter until the grant ends. Reports are due on January 30, April 30, July 30, and

October 30. QPRs shall report the name, completion status, quarterly expenditures, and payment-to-date of each approved activity/sub-award under the Grant Award.

- Unless otherwise approved by Region 10, the recipient must submit a closeout package with all financial, performance, and other reports and required documentation within **180 days** after sub-recipient's notice of completion of the project, or expiration or termination of the project/sub-grant. The recipient must submit closeout documentation within the quarter following payment of the final reimbursement to the sub-recipient.
- For closeout of this project, the Governor's Authorized Representative (GAR) or Tribal Authorized Representative (TAR) shall send a letter of request to the Region 10 Mitigation Division Director, to close the project programmatically and financially. The letter will include the following:
 1. the date work on the project was fully completed, or for planning sub-awards, the date and copy of FEMA approval of the new or updated plan;
 2. the date and a copy of the recipient's final site inspection for the project;
 3. the final total project cost and Federal share, any cost underrun, or overrun, including a Final Cost Line Item budget, to enable any closeout deobligation or obligation of additional funds in NEMIS;
 4. certification that reported costs were incurred in the performance of eligible work, and that the approved work was completed, or if not, an explanation as to the final status of the project and why the project was not completed;
 5. confirmation that the mitigation measure is in compliance with the provisions of the FEMA/State/Tribe Agreement and this approval letter;
 6. a memo from the sub-recipient addressing how each required environmental and special programmatic condition was met (including attachment of any required documentation), and;
 7. submittal of all required documentation relative to the specific project type, e.g. acquisition/demolition, or elevation, including all necessary data to close the project in the Property Site Inventory in FEMA's Hazard Mitigation Assistance grant systems,
- By acceptance of this sub-award the recipient and sub-recipient agree to abide by all laws and regulations required under the HMGP as outlined in 44 CFR 206.432 –.440, 44 CFR 80, 44 CFR 201, the Grants Management requirements contained in 44 CFR 13 and/or 2 CFR 200, and all applicable Federal, State, Tribal, or Local laws.

06/20/2016

**FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANT PROGRAM**

HMGP-EV-01

1:12 PM

Environmental Report

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Sub-Recipient: Newport

FIPS Code: 041-52450

Project Title : City of Newport - NE 70th Drive Landslide Acquisition Project

FEMA Laws/EOs

Laws/EOs	Status
Coastal Barriers Resources Act (CBRA)	Not Applicable

Clean Water Act (CWA)

Completed

Comment: The project, as described, will not affect waters of the US.-JSTEW27-06/13/2016 20:39 GMT

Coastal Zone Management Act (CZMA)

Completed

Comment: As per Oregon Department of Land Conservation and Development (DLCD), if the federal nexus is limited to providing project funding DLCD does not object to the federal funding under our CZMA authority, provided the applicant receives and complies with the conditions of all necessary local, state, and federal permits.-JSTEW27-06/13/2016 20:42 GMT

Endangered Species Act (ESA)

Completed

Comment: Listed species are present in Lincoln County, however given urbanized location(s), short duration, and nature of work, the potential for T&E presence and effects is negligible.-JSTEW27-06/13/2016 20:43 GMT

Fish and Wildlife Coordination Act (FWCA)

Not Applicable

National Historic Preservation Act (NHPA)

Completed

Comment: Project scope of work meets the criteria outlined in Appendix D, Programmatic Allowances, Section I.A. and II.A., of the NHPA Section 106 Programmatic Agreement V.3/1/11-Oregon. Allowance determination was based on written detailed undertaking damage and repair descriptions, and site map and made by a SOI qualified FEMA archaeologist and/or historic preservation specialist.-JSTEW27-06/13/2016 20:44 GMT
None of the buildings are over 50 years old.-SKILNER-06/15/2016 20:02 GMT

Clean Air Act (CAA)

Completed

Comment: Grantee states no asbestos or lead paint is present.-JSTEW27-06/13/2016 20:55 GMT

Migratory Birds Treaty Act (MBTA)

Completed

Comment: Although the project area may be in a flyway zone, the scope of work does not have the potential to take migratory birds.-JSTEW27-06/13/2016 21:17 GMT

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

Completed

Comment: The project, as described, will not adversely affect critical habitat.-JSTEW27-06/13/2016 21:16 GMT

Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RC)

Completed

Comment: The grantee states that debris not recycled will be disposed of at Coffin Butte Landfill (29175 Coffin Butte Rd, Corvallis OR 97330).-JSTEW27-06/13/2016 21:15 GMT

E.O. 11988: Floodplains

Completed

Comment: Based on the effective FIRM panels 41041C0366D, FM41041C0504D and FM41041C0508D, all dated 12/18/2009, the project is outside the floodplain and has no effect on the floodplain or flood levels.-JSTEW27-06/13/2016 21:08 GMT

06/20/2016

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Environmental Report

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FEMA Laws/EOs

Laws/EOs	Status
E.O. 11990: Wetlands	Completed
Comment: Per review of the USFWS National Wetlands Inventory (NWI) mapper, accessed 6/13/2016, the project is not located in a wetland.-JSTEW27-06/13/2016 21:09 GMT	
E.O. 12898: Environmental Justice for Low Income and Minority Populations	Completed
Comment: There are low income or minority populations in this community, but this project will not adversely impact these populations.-JSTEW27-06/13/2016 21:12 GMT	

Required Conditions Resulting from Environmental Review

Law	Entered By	Monitoring Required	Monitoring Completed Date	Monitoring Completed By
RCRA	Science A. Kilner	<input type="checkbox"/>	00/00/0000	
Conditions Required (4000)	The sub-recipient shall dispose of all demolition debris at an appropriately approved, licensed, or permitted facility.			
RCRA	Science A. Kilner	<input type="checkbox"/>	00/00/0000	
Conditions Required (4000)	Sub-recipient is responsible for determining the presence of hazardous materials. This may include, but is not limited to, asbestos, lead paint, propane cylinders, discarded paints and solvents, cleaning chemicals, containers of pesticides, and items containing chlorofluorocarbons (CFCs). Sub-recipient shall identify, handle, transport, and dispose of hazardous materials and/or toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies, including completing required noticing.			

FEMA NEPA Process**FEMA Status**

Catex - Completed

3 CATEX Type Code

If an extraordinary circumstance exists and leads to a significant environmental impact (see 44CFR 10.8 (d) (3)), an Environ.Assessment shall be prepared.

7. Acquisition, demolition and removal of properties (vii)

☒ No Extraordinary Circumstances Requiring an EA.
Documentation Complete:06/13/2016

12. Demolition and disposal of uncontaminated structures (xii)

13. Physical relocation of individual structures where FEMA does not select site (xiii)

Standard Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

06/20/2016

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